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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

In re M.G. et al., Persons Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.M.,

Defendant and Appellant.

F058744

(Super. Ct. Nos. 09CEJ300016-1,  
09CEJ300016-2, 09CEJ300016-3)

**OPINION**

APPEAL from an order of the Superior Court of Fresno County. Jane Cardoza,  
Judge.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,  
for Plaintiff and Respondent.

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Appellant P.M., father of M.G., A.M., and I.M., challenges the juvenile court's order denying visitation while he was incarcerated. We will affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

On January 13, 2009, the Fresno County Department of Children and Family Services (the Department) received a referral alleging emotional abuse and general neglect of the minors by their parents. Mother, J.G., who was about seven months pregnant, had been transported to a hospital for medical attention after father had beaten and kicked her in the abdominal area, causing bleeding. Mother reported that father had been physically abusing her several times a month for the past two years.

The three minors were placed in protective custody. The home was littered with dirty dishes, the kitchen floor and countertops were sticky and dirty, the three children were wearing soiled clothes, all three appeared to be suffering from colds, and the baby, I.M., had a soiled diaper and diaper rash. The two older children reported seeing their father hit their mother. M.G. said her father hits her mother, makes her cry, and makes her bleed.

A Welfare and Institutions Code section 300 petition<sup>1</sup> was filed on behalf of the children on January 15, 2009. At the time the petition was filed, M.G. was three years old, A.M. was two years old, and I.M. was seven months old. The petition alleged that the parents had exposed the children to an "unsafe environment of past and current domestic violence and hostility" that included "verbal and physical altercations." It was alleged that the ongoing domestic violence placed the children at substantial risk of serious physical harm.

On March 6, 2009, the juvenile court made true findings on the petition and set a future dispositional hearing. Father was granted supervised visitation. In April 2009, the

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<sup>1</sup>All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

Department reported that father had not visited with the children since February 17, 2009, when a warrant was issued for his arrest arising from his attack on mother on January 13, 2009. Father indicated he was not sure about continuing with any services or visitation because of the outstanding warrant.

In April and May 2009, father contacted the Department stating that although he wanted to visit his children, he had not done so because of the outstanding warrant. In June 2009, the Department reported that father had made threatening phone calls and sent threatening text messages to mother after she indicated she intended to divorce him. Father also had been following mother.

A dispositional hearing finally was held on June 19, 2009, at which father was not present. The juvenile court removed the children from parental custody and ordered reunification services be provided and supervised visitation be provided father. The services ordered for father included assessments for mental health and domestic violence treatment, parenting classes, and substance abuse testing and treatment.

At a postdispositional hearing on August 28, 2009, father, who was now in custody, requested visits with his children take place at the local jail. The minors' counsel expressed concern about "reintroducing father to these very young children" in a jail setting. Counsel also expressed concern about father's behavior toward mother, which had resulted in mother being unable to have unsupervised visits with the children due to safety concerns for the children.

The juvenile court continued the matter for the Department to provide a report and recommendation regarding visitation in a jail setting. A further hearing was set, with no visitation ordered in the interim.

The Department's report included information from M.G.'s therapist, who recommended against jail visits. The therapist noted that M.G. previously had suffered from nightmares about the domestic violence the child had witnessed between mother

and father. The therapist opined that jail visits might trigger a return of these nightmares and would therefore be detrimental for M.G.

On September 22, 2009, a visit between father and the children was arranged at the jail. A.M. indicated he was “scared.” M.G. twice asked father “your [*sic*] not gonna hit mama no more[?]” I.M. did not interact with father. Despite A.M.’s and M.G.’s concerns, they were anxious to see father and spoke with him on the jail phones.

The Department recommended against jail visits between father and the children. The Department noted that A.M. was afraid to be at the jail, apparently because of the physical environment and the other people present. I.M. did not recognize father and apparently had no relationship with him. M.G.’s therapist was recommending against jail visits. Father, despite involvement with the Department, had continued to threaten mother. The Department opined that the children would not benefit from visits with father in jail and recommended suspension of visits while father was incarcerated.

At the hearing on visitation, father was present. The Department recommended that visits be suspended while father was incarcerated and that visitation be reassessed upon his release from custody. Father objected to suspension of visitation, arguing that the case was in the reunification stage and both he and the children would benefit from visits.

The juvenile court ordered that visits be suspended while father was incarcerated, that there be no contact between the children and father while he was incarcerated, and that upon his release, father was to contact the Department and be reassessed for visitation.

## **DISCUSSION**

Father’s sole argument is that the juvenile court erred in denying visitation with the children while he is incarcerated. We disagree.

### ***Standard of review***

We review an order denying visitation for abuse of discretion and uphold the order if it is supported by substantial evidence. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 839 (*Daniel C.H.*) [where substantial evidence supported the no-visitation order, the order was not an abuse of discretion].) “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (*Heather A.*).)

Father notes that the juvenile court was required to make its finding of detriment based upon clear and convincing evidence. On appeal, however, the clear and convincing test disappears and, if there is substantial evidence to support the juvenile court’s determination, it is upheld. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881.)

### ***Analysis***

Visitation is an essential part of a reunification plan. “In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows: [¶] ... Visitation shall be as frequent as possible, consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A).)

Visitation is no less crucial for an incarcerated parent receiving reunification services. (§ 361.5, subd. (e)(1); *In re Dylan T.* (1998) 65 Cal.App.4th 765 (*Dylan T.*); *In re Brittany S.* (1993) 17 Cal.App.4th 1399 (*Brittany S.*).) Therefore, when reunification services are being provided, it is error to deny visitation with the parent to whom the services apply unless there is sufficient evidence that visitation would be detrimental to

the child. (*Dylan T.*, at p. 769 [denial of visitation improperly based upon minor's age alone]; *Brittany S.*, at p. 1407 & fn. 7 [denial of visitation improper where mother incarcerated only 36 miles distant].)

Section 366.21, subdivision (h) provides that a *detriment to the child* standard applies to visitation requests for parents who have been receiving reunification services. The failure of the juvenile court to make an explicit finding that jail visitation would be detrimental to the minors is not fatal because the finding may be implied from the record. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 27.)

Father seems to believe that visitation while he was incarcerated was denied simply because he was incarcerated. That clearly was not the case.

Father had not been complying with the visitation provisions of the reunification plan prior to incarceration. Although entitled to supervised visits, father had not visited with his children for several months because of an outstanding arrest warrant. Father's reunification plan required him to follow the conditions of the visitation plan by maintaining contact with his children. Yet, he chose to sever contact for several months in order to avoid arrest on an outstanding warrant.

Prior to his arrest, father had threatened and harassed mother and had interfered with her visitation with the children; father's conduct precluded unsupervised visits between mother and the children. Father had made minimal progress toward alleviating the causes that necessitated the filing of the dependency petition.

After his arrest on the outstanding warrant, father sought to reinstate visitation with his children by having jail visits. By this time, a period of several months during which father had no contact with the children had passed. The infant, I.M., had no recollection of father and no relationship with him.

The two older children, M.G. and A.M., were keenly aware of the domestic violence that father had inflicted on their mother. At the one jail visit that took place,

M.G. repeatedly asked father whether he was going to hit mother again; A.M. asked if father was in jail because he had hit mother.

A.M. was afraid to be in the jail setting. M.G.'s therapist recommended against jail visits, opining that it might trigger a recurrence of nightmares the child suffered as a result of the domestic violence she had witnessed.

In support of his argument that the foregoing facts do not support a finding of detriment, father relies on *Dylan T.*, *supra*, 65 Cal.App.4th 765 and *In re C.C.* (2009) 172 Cal.App.4th 1481. In *Dylan T.*, the denial of visitation was improperly based upon the minor's age alone. (*Dylan T.*, at p. 769.) In *C.C.*, the mother claimed the juvenile court improperly delegated to the child the power to grant or deny visitation. (*C.C.*, at p. 1492.) Neither of these factual situations is present here.

Father's reliance on *Brittany S.*, *supra*, 17 Cal.App.4th 1399 is inapposite. In that case, the Court of Appeal reversed a judgment terminating parental rights because the reunification plan did not include visitation, but was limited to letters and telephone calls while the mother was incarcerated. In the instant case, father's parental rights have not been terminated and the issue of visitation is to be addressed once he is released from custody.

At the time of the juvenile court's order, the record revealed no parent-child bond that a lack of visitation could disrupt with respect to I.M. As to M.G. and A.M., it is undisputed that father has an extensive history of domestic violence reflecting that, when not incarcerated, he repeatedly has engaged in threatening and violent conduct toward mother, which has affected the children. Father's inappropriate conduct continued even after the Department's intervention, as shown by his threatening phone calls and text messages. The juvenile court's order suspending visitation while father was incarcerated was not based solely on father's incarceration.

We conclude that the following constitute substantial evidence on which a juvenile court could find that jail visits were detrimental to the children: (1) Father's lack of any

relationship with I.M.; (2) jail visits reminded the children of the domestic violence they had witnessed against their mother as evidenced by their questions and statements regarding the violence; (3) A.M. being fearful when forced to visit in a jail setting; and (4) M.G.'s therapist recommending against jail visits. (*Heather A.*, *supra*, 52 Cal.App.4th at p. 193.)

We thus conclude the juvenile court did not abuse its discretion in suspending visitation while father was incarcerated. (*Daniel C.H.*, *supra*, 220 Cal.App.3d at p. 839.)

### **DISPOSITION**

The order suspending visitation with father while he was incarcerated is affirmed.

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CORNELL, Acting P.J.

WE CONCUR:

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DAWSON, J.

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HILL, J.